

# **EXHIBIT D**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA, et al.

Plaintiffs,

Civil Action No.  
1:21-cv-11558-LTS

v.

AMERICAN AIRLINES GROUP, INC.,  
et al.,

Defendants.

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BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

BENCH TRIAL  
Day 10

Wednesday, October 12, 2022  
9:00 a.m.

John J. Moakley United States Courthouse  
Courtroom 13  
One Courthouse Way  
Boston, Massachusetts

Rachel M. Lopez, CRR  
Official Court Reporter  
raeufr@gmail.com

1     **Q.** That was for exactly the same purpose as we're talking  
2     about here, isn't it, sir?

3     **A.** The purpose for this market definition is to inform the  
4     likely competitive effects of the NEA.

5     **Q.** And that was for an airline merger, right? And you claim  
6     that they're the same thing.

7     **A.** I've evaluated, I have observed that -- no, no, no.  
8     Mergers are different. What -- each merger is different.  
9     NEA is different than other mergers may be, for NEA we  
10    observe important competition between American and JetBlue  
11    that occurs at LaGuardia and JFK, and the evidence is  
12    consistent that the consumers would not substitute towards  
13    Newark in a great enough degree to offset a loss of  
14    competition among JetBlue and American. And all of that  
15    Delta share coming out of JFK and LaGuardia, too. That's  
16    meaningful competition and it gets picked up in the  
17    hypothetical monopolist test. It's really not surprising to  
18    me that JFK LaGuardia would pass the hypothetical monopolist  
19    test, given what we're talking about the complete loss of  
20    competition with the two very large and important airports in  
21    New York City. Just looking at the economics, it's not  
22    really a surprising conclusion.

23    **Q.** Well, Dr. Miller, do you believe that Spirit, based upon  
24    its services from Newark-Liberty airport, is a substantial  
25    competitor to American, JetBlue, and Delta and other airlines

1 operating on routes that end or begin in LaGuardia/JFK?

2 **A.** It's the same question that you've already asked, which  
3 asked me to put a meaning to an adjective. And what I can  
4 say is that the data that I've analyzed indicates the  
5 diversion to Spirit and other areas in New York City that  
6 would be inadequate to discipline and decrease market power  
7 among carriers that operate out of JFK and LaGuardia.

8 **Q.** Are you saying that, after two years of work, you can't  
9 answer the question of whether Spirit is a substantial  
10 competitor in the New York markets?

11 **A.** I've answered that question, and the answer is that the  
12 diversion to all of the carriers at Newark, including Spirit  
13 and including United, and in addition, diversion outside  
14 of -- you know, to other options, for example, staying at  
15 home, you can add all of that together, and together, that's  
16 not enough to limit increase in market power out of JFK and  
17 LaGuardia, which, again, is not really surprising, because  
18 you're talking about a combination of American and JetBlue  
19 and Delta, and everybody else is flying out of two of the  
20 largest airports in the world.

21 **Q.** Sir, I'm not asking you anything about what would happen  
22 in some hypothetical world with a hypothetical monopolist and  
23 a SSNIP. I just mean today, in the real world, is Spirit a  
24 substantial competitor to the airlines that are operating out  
25 of LaGuardia and JFK?